

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

S&W FOREST PRODUCTS, LTD., a
British Columbia corporation,

Plaintiff,

v.

CEDAR SHAKE & SHINGLE
BUREAU, a Washington nonprofit
corporation; WALDUN FOREST
PRODUCTS LTD., a British Columbia
corporation; and ANBROOK
INDUSTRIES LTD., a British
Columbia corporation,

Defendants.

CASE NO. 2:19-cv-00202-MJP

**STIPULATED
CONFIDENTIALITY ORDER**

*In re Cedar Shakes and Shingle
Antitrust Litigation*

This Document Relates to:

ALL CLASS ACTIONS

CASE NO. 2:19-cv-00288-MJP

**STIPULATED
CONFIDENTIALITY ORDER**

1 The parties hereby stipulate to the following provisions regarding the treatment of
2 confidential information or materials in this matter. This Order shall govern the parties in the
3 above-captioned cases whether they currently are involved or become so in the future, and any
4 other related actions presenting common questions of law or fact before this Court.

5 1. PURPOSES, SCOPE, AND LIMITATIONS

6 (a) Discovery in this action is likely to involve production of confidential,
7 proprietary, or private information for which special protection may be warranted. Accordingly,
8 the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective
9 Order.

10 (b) The parties acknowledge that this agreement is consistent with LCR 26(c).
11 It does not confer blanket protection on all disclosures or responses to discovery, the protection it
12 affords from public disclosure and use extends only to the limited information or items that are
13 entitled to confidential treatment under the applicable legal principles, and it does not
14 presumptively entitle parties to file Confidential Material or Information under seal.

15 (c) Nothing in this Order shall be construed to limit the use of any document at
16 any trial or hearing in these actions provided that the parties take necessary advance precautions
17 to avoid the public disclosure of Confidential Material or Information. A party that intends to
18 present or that anticipates that another party may present Confidential Material or Information at
19 a hearing or trial in these actions shall bring that issue to the Court's and parties' attention by
20 motion sufficiently in advance of the proceeding without disclosing the Confidential Material or
21 Information. The Court may thereafter make such orders as are necessary to govern the use of
22 such documents at trial.

23 (d) The parties in conducting discovery from third parties shall attach this Order
24 to a copy of any subpoena or other discovery request. Third parties from whom discovery is
25 requested are parties to this Order and are entitled to the protections of this Order in responding to
26 such requests.

1 (e) This Order shall take effect when entered and shall be binding upon all
2 counsel of record and their law firms, the parties, and persons made subject to this Order by its
3 terms.

4 2. “CONFIDENTIAL” MATERIAL OR INFORMATION

5 2.1 Generally

6 “Confidential” Material or Information is material or information related to the confidential
7 conduct of any party and/or any party’s board of directors, and shall include, by way of example
8 and without limitation, the following documents and tangible things produced or otherwise
9 exchanged:

- 10 (a) customer lists or information;
11 (b) financial, tax, and customs data;
12 (c) information prohibited from disclosure by statute or contractual agreement;
13 (d) information related to proprietary marketing, sales, product development,
14 and other competitive strategy;
15 (e) margin, cost, and pricing information;
16 (f) proprietary information related to raw material procurement; and
17 (g) other competitively sensitive data, the unprotected disclosure of which
18 would enable the receiving party to obtain an undue competitive advantage over the disclosing
19 party.

20 2.2. “Attorneys’ Eyes Only” Material or Information

21 (a) The parties recognize that because this litigation involves claims among
22 competitors arising from alleged anticompetitive activity, there is a high likelihood that discovery
23 will include disclosure of certain documents and information that are highly competitively
24 sensitive, the disclosure of which to an opposing party could cause the disclosing party substantial
25 and irreparable harm.

26 (b) The parties therefore agree that the “Attorneys’ Eyes Only” designation may be

made over Confidential Material or Information, in the reasonable discretion of the disclosing party. Designation must be made at the time of production, as set forth in Part 5.2.

(c) As set forth in Part 4.2(b), the parties may preclude disclosure of Confidential Information or Material to the officers, directors, and employees (including in-house counsel) of the receiving party by designating such material as Attorneys' Eyes Only.

(d) The receiving party need not treat Confidential Information or Material as Attorneys' Eyes Only unless the disclosing party has made such a designation at the time of production.

3. SCOPE

The protections conferred by this agreement cover not only Confidential Material or Information (as defined above), but also (1) any information copied or extracted from Confidential Material or Information; (2) all copies, excerpts, summaries, or compilations of Confidential Material or Information; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal Confidential Material or Information.

However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL AND INFORMATION

4.1 Basic Principles.

(a) A receiving party may use Confidential Material or Information that is disclosed or produced by another party or by a non-party in connection with *S&W Forest Prods., Inc. v. Cedar Shake & Shingle Bureau, et al.*, or in *In re Cedar Shakes and Shingles Antitrust Litigation*, or any member action, only for prosecuting, defending, or attempting to settle *S&W Forest Prods., Inc. v. Cedar Shake & Shingle Bureau, et al.*, or *In re Cedar Shakes and Shingles Antitrust Litigation* or any member action, including any appeal thereof.

(b) Confidential Material or Information must be stored and maintained by a receiving party at a location and in a secure manner that ensures that access is limited to the persons

1 authorized under this agreement.

2 (c) Confidential Material or Information may be disclosed only to the
3 categories of persons and under the conditions described in this agreement.

4 (d) To the extent any person is required to complete the certification contained
5 in Attachment A to this Order, facsimile signatures or signatures transferred in electronic format
6 (e.g., PDF) shall be treated as original signatures for purposes of this Order.

7 (e) Nothing in this Order shall prevent or prejudice any party designating
8 materials as Confidential from using its own such designated documents for any purpose, including
9 privately disclosing its own Confidential Material to others not mentioned in this Paragraph 4.2,
10 and such private disclosure shall not waive the protections of this Order.

11 4.2 Disclosure of "CONFIDENTIAL" Material or Information. Unless otherwise
12 ordered by the Court (including as specified in Paragraph 4.1) or permitted in writing by the
13 designating party, a receiving party may disclose any Confidential Material or Information only to
14 the following:

15 (a) Counsel. The receiving party's counsel of record in this action, as well as
16 employees of counsel to whom it is reasonably necessary to disclose the information for this
17 litigation;

18 (b) Parties. The current officers, directors, and employees (including in house
19 counsel) of the receiving party to whom disclosure is reasonably necessary for this litigation and
20 who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless the
21 disclosing party produces a particular document or material on an Attorneys' Eyes Only basis, and
22 the document or material is so designated by the disclosing party;

23 (c) Experts and Consultants. Experts, investigators, and consultants employed
24 by the parties or counsel for the parties to assist in the preparation and trial of this action and who
25 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

26 (d) The Court and its Personnel. The Court, Court personnel, and Court

1 reporters and their staff;

2 (e) Court Reporters. Court reporters and recorders engaged for depositions who
3 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (f) Contractors. Copy or imaging services retained by counsel to assist in the
5 duplication of Confidential Material or Information who have signed the “Acknowledgment and
6 Agreement to Be Bound” (Exhibit A), provided that counsel for the party retaining the copy or
7 imaging service instructs the service not to disclose any Confidential Material or Information to
8 third parties and to immediately return all originals and copies of any Confidential Material or
9 Information;

10 (g) Witnesses. During their depositions, witnesses in the action to whom
11 disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to
12 Be Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the Court.
13 Witnesses shall not retain a copy of documents containing Confidential Material or Information,
14 except witnesses may receive a copy of all exhibits marked at their depositions in connection with
15 review of the transcripts, subject to the terms of this Order. Pages of transcribed deposition
16 testimony or exhibits to depositions that reveal Confidential Material or Information must be
17 separately bound by the court reporter and may not be disclosed to anyone except as permitted
18 under this agreement;

19 (h) Author or Recipients. The author or recipient of a document containing the
20 information or a custodian or other person who otherwise possessed or knew the information;

21 (i) Identified Persons. Any person who is referenced in the document or whose
22 conduct is purported to be identified in the document, provided that counsel for the party intending
23 to disclose the information has a good-faith basis for believing such Confidential Material or
24 Information is relevant to events, transactions, discussions, communications or data about which
25 the person has knowledge, disclosure to such person is limited to the portion of the document in
26 which the person or person’s conduct is identified or referenced, and such person has completed

1 the certification contained in Attachment A to this Order; or

2 (j) Others by Consent. Other persons only by written consent of the producing
3 party or upon order of the Court and on such conditions as may be agreed or ordered, but such
4 consent shall not be unreasonably withheld.

5 4.3 Filing Confidential Material or Information.

6 (a) This Order does not, by itself, authorize the filing of any document under
7 seal. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that
8 will be applied when a party seeks permission from the Court to file material under seal. A party
9 who seeks to maintain the confidentiality of its information must satisfy the requirements of Local
10 Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this
11 requirement will result in the motion to seal being denied, in accordance with the strong
12 presumption of public access to the Court's files.

13 (b) Before filing Confidential Material or Information or discussing or
14 referencing such material in court filings, the filing party shall confer with the designating party,
15 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
16 remove the confidential designation, whether the document can be redacted, or whether a motion
17 to seal or stipulation and proposed order is warranted.

18 (c) During the meet and confer process, the designating party must identify the
19 basis for sealing the specific Confidential Material or Information at issue, and the filing party
20 shall include this basis in its motion to seal, along with any objection to sealing the information at
21 issue.

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection.

24 (a) Each party or non-party that designates information or items for protection
25 under this agreement must take care to limit any such designation to specific material that qualifies
26 under the appropriate standards. The designating party must designate for protection only those

1 parts of material, documents, items, or oral or written communications that qualify, so that other
2 portions of the material, documents, items, or communications for which protection is not
3 warranted are not swept unjustifiably within the ambit of this agreement.

4 (b) The designation of a document as Confidential is a certification by an
5 attorney that there is a good faith belief that the document contains Confidential Material or
6 Information as defined in this Order. Mass, indiscriminate, or routinized designations are
7 prohibited. Designations that are shown to be clearly unjustified or that have been made for an
8 improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to
9 impose unnecessary expenses and burdens on other parties) expose the designating party to
10 sanctions.

11 (c) If it comes to a designating party's attention that information or items that
12 it designated for protection do not qualify for protection, the designating party must promptly
13 notify all other parties that it is withdrawing the mistaken designation.

14 5.2 Manner and Timing of Designations. Except as otherwise provided in this
15 agreement (*see, e.g.*, 5.2(a)(ii), *infra*), or as otherwise stipulated or ordered, any disclosure or
16 discovery material that qualifies for protection under this agreement must be clearly so designated
17 before or when the material is disclosed or produced.

18 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
19 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
20 the designating party must affix the word "CONFIDENTIAL – SUBJECT TO PROTECTIVE
21 ORDER" or, in the appropriate case, "CONFIDENTIAL – ATTORNEYS' EYES ONLY –
22 SUBJECT TO PROTECTIVE ORDER" to each page that contains Confidential Material or
23 Information. If only a portion or portions of the material on a page qualifies for protection, the
24 producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
25 markings in the margins).

26 (i) To the extent a document is produced in a form in which placing or

1 affixing the words “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” or
2 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SUBJECT TO PROTECTIVE ORDER” on
3 the document is not practicable, the producing party may designate the document as confidential
4 by cover letter, slip sheet, production metadata, or by affixing a label to the production media
5 containing the document.

6 (ii) The marking “CONFIDENTIAL – SUBJECT TO PROTECTIVE
7 ORDER” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SUBJECT TO PROTECTIVE
8 ORDER” shall be applied prior to or at the time the documents are produced or disclosed. Applying
9 such marking to a document does not mean that the document has any status or protection by
10 statute or otherwise except to the extent and for the purposes of this Order.

11 (iii) Any copies that are made of any documents marked
12 “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” or “CONFIDENTIAL –
13 ATTORNEYS’ EYES ONLY – SUBJECT TO PROTECTIVE ORDER” shall also be so marked,
14 except that indices, electronic databases or lists of documents that do not contain substantial
15 portions or images of the text of documents designated as Confidential and do not otherwise
16 disclose the substance of the Confidential Material or Information are not required to be marked.

17 (b) Testimony given in deposition or in other pretrial proceedings: the parties
18 and any participating non-parties must identify on the record, during the deposition or other pretrial
19 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
20 after reviewing the transcript. Any party or non-party may, within thirty (30) days after receiving
21 the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
22 exhibits thereto, as Confidential. A party must make such a designation by serving a Notice of
23 Designation to all parties of record and the court reporter for the deposition in question as to
24 specific pages of the transcript that are designated as Confidential, and thereafter only those
25 portions identified in the Notice of Designation shall be protected by the terms of this Order. The
26 court reporter shall provide a final copy of the transcript that reflects any designations of pages of

1 the transcript as Confidential Material or Information in the lower left-hand corner of each
2 designated page. If a party or non-party desire to protect Confidential Material or Information at
3 trial, the issue should be addressed during the pre-trial conference.

4 (c) Other tangible items: the producing party must affix in a prominent place
5 on the exterior of the container or containers in which the information or item is stored the word
6 “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” or “CONFIDENTIAL –
7 ATTORNEYS’ EYES ONLY – SUBJECT TO PROTECTIVE ORDER.” If only a portion or
8 portions of the information or item warrant protection, the producing party, to the extent
9 practicable, shall identify the protected portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
11 designate qualified information or items does not, standing alone, waive the designating party’s
12 right to secure protection under this agreement for such material. Upon timely correction of a
13 designation, the receiving party must make reasonable efforts to ensure that the material is treated
14 in accordance with the provisions of this agreement. No party shall be found to have violated this
15 Order for failing to maintain the confidentiality of material during a time when that material has
16 not been designated Confidential Material or Information, even where the failure to so designate
17 was inadvertent and where the material is subsequently designated Confidential Material or
18 Information.

19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
21 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
22 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
23 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
24 challenge a confidentiality designation by electing not to mount a challenge promptly after the
25 original designation is disclosed.

1 6.2 Meet and Confer.

2 (a) The parties must make every attempt to resolve any dispute regarding
3 confidentiality designations without Court involvement.

4 (b) In conferring, the challenging party must explain the basis for its belief that
5 the confidentiality designation was not proper and must give the designating party an opportunity
6 to review the designated document, to reconsider the designation, and, if no change in designation
7 is offered, to explain the basis for the designation. The designating party must respond to the
8 challenge within five (5) business days of the meet and confer.

9 (c) Any motion regarding confidential designations or for a protective order
10 must include a certification, in the motion or in a declaration or affidavit, that the movant has
11 engaged in a good faith meet and confer conference with other affected parties in an effort to
12 resolve the dispute without court action. The certification must list the date, manner, and
13 participants to the conference. A good faith effort to confer requires a face-to-face meeting or a
14 telephone conference.

15 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
16 intervention, the designating party may file and serve a motion to retain confidentiality under Local
17 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
18 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
19 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
20 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
21 the material in question as confidential until the Court rules on the challenge. As such, any motion
22 challenging a confidentiality designation must not publicly file the documents with contested
23 designations nor describe them in a manner that would reveal Confidential Material or
24 Information.

1 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
2 LITIGATION

3 (a) If a party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this action as Confidential
5 Material or Information, that party must do all of the following:

6 (i) promptly notify the designating party in writing and include a copy
7 of the subpoena or court order;

8 (ii) promptly notify in writing the party who caused the subpoena or
9 order to issue in the other litigation that some or all of the material covered by the subpoena or
10 order is subject to this agreement. Such notification shall include a copy of this agreement; and

11 (iii) cooperate with respect to all reasonable procedures sought to be
12 pursued by the designating party whose confidential material may be affected.

13 (b) The purpose of imposing these duties is to alert the interested persons to the
14 existence of this Order and to afford the designating party in this case an opportunity to try to
15 protect its Confidential Material or Information in the court from which the subpoena or order
16 issued. The designating party shall bear the burden and the expense of seeking protection in that
17 court of its Confidential Material or Information, and nothing in these provisions should be
18 construed as authorizing or encouraging a receiving party in this action to disobey a lawful
19 directive from another court. The obligations set forth in this paragraph remain in effect while the
20 party has in its possession, custody or control Confidential Material or Information by the other
21 party to this case.

22 (c) A party has a right to challenge the sealing of particular documents that
23 have been filed under seal, and the party asserting confidentiality will have the burden of
24 demonstrating the propriety of filing under seal.

25 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

26 (a) If a receiving party learns that, by inadvertence or otherwise, it has disclosed

Confidential Material or Information to any person or in any circumstance not authorized under this agreement, the receiving party must within two (2) business days of learning of such disclosure do each of the following:

(i) notify in writing the designating party of the unauthorized disclosures;

(ii) use its best efforts to retrieve all unauthorized copies of the protected material;

(iii) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and

(iv) request that such person or persons execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B) and Part D of the parties' Stipulation and Proposed Order Concerning Agreement Regarding Discovery of Electronically Stored Information.

10. NON-TERMINATION AND RETURN OF DOCUMENTS

(a) Within sixty (60) days after the termination of this action, including all appeals, each receiving party must return all Confidential Material or Information to the producing party, including all copies, extracts and summaries thereof or, in the alternative, destroy the Confidential Material or Information in accordance with appropriate methods.

(b) Notwithstanding the above requirements to return or destroy documents, counsel may retain (i) attorney work product, including an index that refers or relates to designated Confidential Material or Information so long as that work product does not duplicate verbatim

1 substantial portions of Confidential Material or Information, and (ii) one complete set of all
2 documents filed with the Court including those filed under seal. Any retained Confidential
3 Material or Information shall continue to be protected under this Order. An attorney may use his
4 or her work product in subsequent litigation, provided that its use does not disclose or use
5 Confidential Material or Information.

6 (c) Filings under seal shall be deleted from the ECF system only upon order of
7 the Court.

8 (d) The confidentiality obligations imposed by this agreement shall remain in
9 effect until a designating party agrees otherwise in writing or a court orders otherwise.

Agreed this 29th Day of August, 2019.

**JAMESON BABBITT STITES &
LOMBARD**

By: /s/ Eric J. Brickenstein (w/ consent)
Bruce P. Babbitt, WSBA #4830
801 2nd Avenue, Suite 700
Seattle, WA 98104-1515
Phone: (206) 292-1994
Fax: (206) 292-1995
bbabbitt@jbsl.com

HAGLUND KELLEY LLP

Michael E. Haglund (Pro Hac Vice)
Michael K. Kelley (Pro Hac Vice)
Eric J. Brickenstein (Pro Hac Vice)
200 SW Market Street, Suite 1777
Portland, OR 97201
Phonne: (503) 225-0777
Fax: (503) 225-1257
mhaglund@hk-law.com
mkelley@hk-law.com
ebrickenstein@hk-law.com

*Attorneys for Plaintiff S&W Forest
Products*

**MCNAUL EBEL NAWROT &
HELGREN PLLC**

By: /s/ Christopher J. Cormier (w/ consent)
Gregory J Hollon, WSBA #26311
600 University Street, Suite 2700
Seattle, WA 98101-3143
Phone: (206) 467-1816
Fax: (206) 624-5128
ghollon@mcnaul.com

*Liaison Counsel for the Proposed Reseller
Plaintiff Classes*

KELLER ROHRBACK L.L.P.

By: /s/ Brian D. Clark (with consent)
Mark A. Griffin, WSBA #16296
Raymond J. Farrow, WSBA #31782
Karin B. Swope, WSBA #24015
1201 Third Avenue, Suite 3200
Seattle, WA 98101
Phone: (206) 623-1900
Fax: (206) 623-3384
mgriffin@kellerrohrback.com
rfarrow@kellerrohrback.com
kswope@kellerrohrback.com

**LOCKRIDGE GRINDAL NAUEN
P.L.L.P.**

W. Joseph Bruckner (MN#0147758)
Elizabeth R. Odette (MN#0340698)
Brian D. Clark (MN#00390069)
Arielle S. Wagner (MN#00398332)
100 Washington Avenue S., Suite 2200
Minneapolis, MN 55401
Phone: (612) 339-6900
Fax: (612) 339-0981
wjbruckner@locklaw.com
erodette@locklaw.com
bdclark@locklaw.com
aswagner@locklaw.com

*Co-Lead Counsel for the Proposed End
User Plaintiff Classes*

TOUSLEY BRAIN STEPHENS

By: /s/ Kim D. Stephens (w/ consent)
Kaleigh N.B. Powell, WSBA #52684
Kim D. Stephens, WSBA #11984
Jason Dennett, WSBA #30686
1700 Seventh Avenue, Suite 22200
Seattle, WA 98101
Phone: (206) 682-5600
kpowell@tousley.com
kstephens@tousley.com
jdennett@tousley.com

BURNS CHAREST LLP

Christopher J Cormier
5290 Denver Tech Center Pkway, Suite 150
Greenwood Village, CO 80111
Phone: (720) 630-2092
ccormier@burnscharest.com

BURNS CHAREST LLP

Warren T. Burns
Spencer M Cox
William B. Thompson
900 Jackson Street, Suite 500
Dallas, TX 75202
Phone: (469) 904-4550
wburns@burnscharest.com
scox@burnscharest.com
wthompson@burnscharest.com

BURNS CHAREST LLP

Lydia A Wright
365 Canal Street, Suite 1170
New Orleans, LA 70130
Phone: (504) 799-2845
lwright@burnscharest.com

**STOLL STOLL BERNE LOKTING &
SHLACHETER PC**

Keith Dubanevich
Keil M. Mueller
Lydia Anderson-Dana
209 SW Oak Street, Suite 500
Portland, OR 97204
Phone: (503) 227-1600
kdubanevich@stollberne.com
kmueller@stollberne.com
landersondana@stollberne.com

*Co-Lead Counsel for the Proposed Reseller
Plaintiff Classes*

LANE POWELL PC

By: /s/ Joseph D. Adamson
Jessica Walder, WSBA #47676
Larry Steven Gangnes, WSBA #8118
Heidi Brooks Bradley, WSBA #35759
Joseph Adamson, WSBA #54752
1420 Fifth Avenue, Suite 4200
Seattle, WA 98111-9402
Phone: (206) 223-7035
Fax: (206) 223-7107

HAUSFELD LLP

Bonney Sweeney
Samantha Stein
600 Montgomery Street, Suite 3200
San Francisco, CA 94111
Phone: (415) 633-1908
bsweeney@hausfeld.com
sstein@hausfeld.com

HAUSFELD LLP

James J. Pizzirusso
Nathaniel C. Giddings
Paul Gallagher
1700 K Street NW, Suite 650
Washington, DC 20006
Phone: (202) 540-7200
jpizzirusso@hausfeld.com
ngiddings@hausfeld.com
pgallagher@hausfeld.com

*Co-Lead Counsel for the Proposed Direct
Purchaser Plaintiff Class*

STOKES LAWRENCE

By: /s/ Mathew L. Harrington (w/ consent)
Mathew L. Harrington, WSBA #33276
1420 Fifth Avenue, Suite 3000
Seattle, WA 98101-2393
Phone: (206) 626-6000
MLH@stokeslaw.com

Attorneys for Waldun Forest Products Ltd.

walderj@lanepowell.com
gangnesl@lanepowell.com
bradleyh@lanepowell.com
adamsonj@lanepowell.com

*and Waldun Forest Products Partnership
d/b/a The Waldun Group*

***Attorneys for Cedar Shake & Shingle
Bureau***

YARMUTH LLP

By: /s/ Molly A. Terwilliger (w/ consent)
Elizabeth Simson Weinstein, WSBA
#45763
Molly A. Terwilliger, WSBA #28449
1420 5TH Avenue, Suite 1400
Seattle, WA 98101
Phone: (206) 516-3800
Fax: (206) 516-3888
eweinstein@yarmuth.com
mterwilliger@yarmuth.com

Attorneys for Anbrook Industries Ltd.

**HILLIS CLARK MARTIN &
PETERSON**

By: /s/ Jake Ewart (w/ consent)

Laurie Lootens Chyz, WSBA #14297
Jake Ewart, WSBA #38655
Jessica C. Kerr, WSBA #49866
999 Third Avenue, Suite 4600
Seattle, WA 98104
Phone: (206) 623-1745
laurie.chyz@hcmp.com
jake.ewart@hcmp.com
jessica.kerr@hcmp.com

***Attorneys for G&R Cedar Ltd. and G&R
Cedar (2009) Ltd.***

1 **IT IS SO ORDERED.**

2 Dated: __September 4__, 2019.

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5 Marsha J. Pechman
6 United States Senior District Judge
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Western District of Washington on
7 _____, 2019 in the case of *In re Cedar Shakes and Shingles Antitrust*
8 *Litigation*, Case No. 2:19-cv-00202-MJP. I agree to comply with and to be bound by all the terms
9 of this Stipulated Protective Order and I understand and acknowledge that failure to so comply
10 could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I
11 will not disclose in any manner any information or item that is subject to this Stipulated Protective
12 Order to any person or entity except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
15 Order, even if such enforcement proceedings occur after termination of this action.

16 Date: _____

17 City and State where sworn and signed: _____

18 Printed name: _____

19 Signature: _____